Supreme Court of the United States

OCTOBER TERM, 1904.

No. 37.

NATIONAL COTTON OIL COMPANY ET AL.

vs.

STATE OF TEXAS.

No. 38.

SOUTHERN COTTON OIL COMPANY ET AL.

vs.

STATE OF TEXAS.

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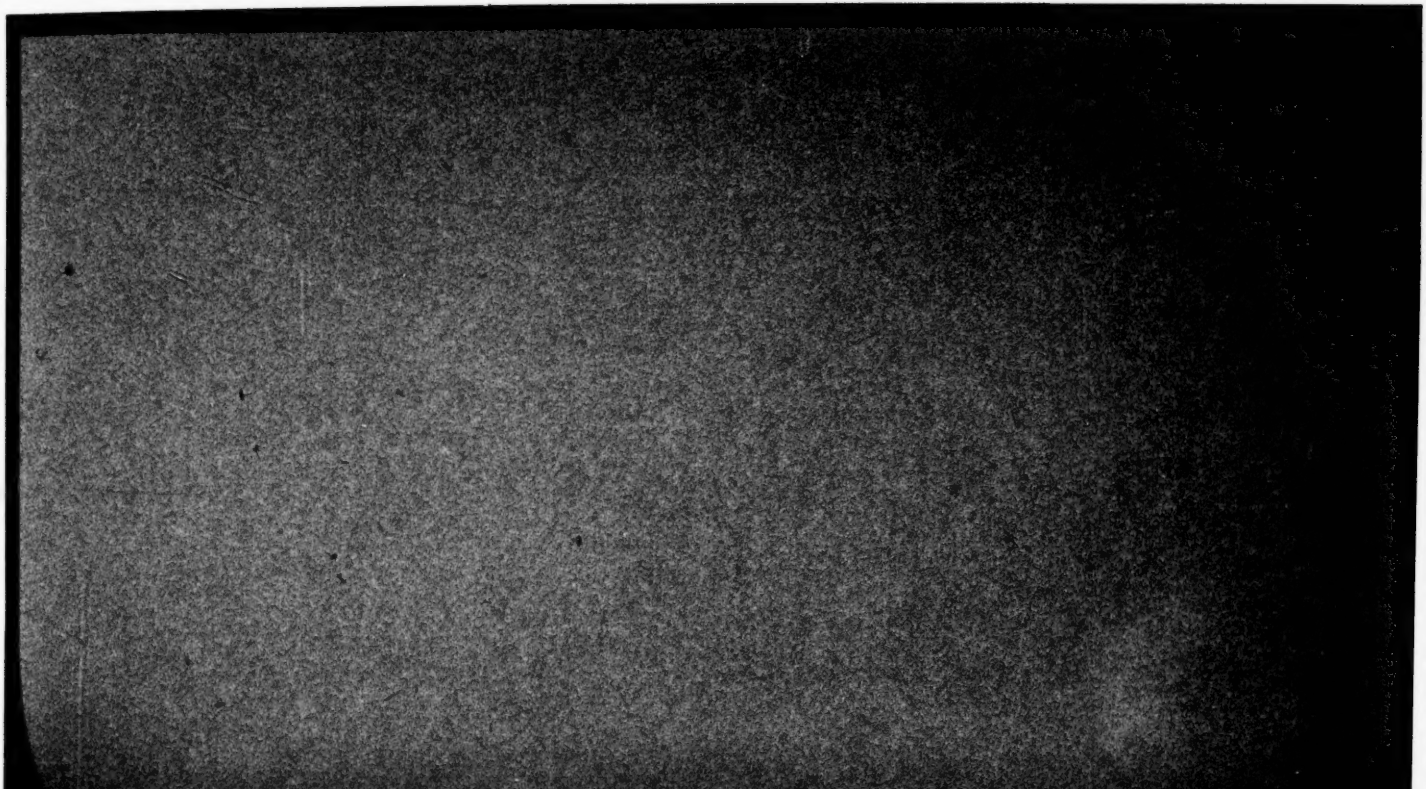
C. G. Burgoyne, Walker and Centre Streets, N. Y.



Trusts—Conspiracies Against Trade.

SEC. 1. Defines trusts.

2. Corporations to forfeit charter for violation of this law.

3. Duty of attorney-general, etc.

4. Foreign corporations violating this act forbidden to do business.

5. *Quo warranto* proceedings.

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13. Exempts live stock and agricultural products in hands of producers.

14. Emergency clause.

CHAP. 117.—[S. H. Bs. Nos. 9, 117, 136, 192, and 313.] An Act to define trusts, and to provide for penalties and punishment of corporations, persons, firms, and associations of persons connected with them, and to promote free competition in the state of Texas.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That a trust is a combination of capital, skill, or acts by two or more persons, firms, corporations, or associations of persons, or of either two or more of them for either, any, or all of the following purposes: First—To create or carry out restrictions in trade. Second—To limit or reduce

the production, or increase or reduce the price of merchandise or commodities. Third—To prevent competition in manufacture, making, transportation, sale, or purchase of merchandise, produce or commodities. Fourth—To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, use, or consumption in this state. Fifth—To make or enter into, or execute or carry out any contract, obligation, or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce, or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competion among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite, any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

SEC. 2. That any corporation holding a charter under the laws of the state of Texas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

SEC. 3. For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the attorney-general or district or county attorney, or either of them, upon his own motion, and without leave or order of any court or judge, to institute suit or *quo warranto* proceedings in Travis County, at Austin, or at the county seat of any county in the state, where such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence.

SEC. 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited

from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in the district court of Travis County, in the name of the State of Texas.

SEC. 5. That the provisions of Chapter 48, General Laws of this state, approved July 9, 1879, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this act.

SEC. 6. Any violation of either or all the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may be or may become engaged in any such conspiracy, or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant, or employe, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders thereunder or in pursuance thereof, shall be punished by fine not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

SEC. 7. In any indictment for an offense named in this act it is sufficient to state the purposes or effects of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when, or where it was created.

SEC. 8. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

SEC. 9. Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this act which do not in their commission necessarily require a personal presence in this state,

the object being to reach and punish all persons offending against its provisions whether within or without the state.

SEC. 10. Each and every firm, person, corporation, or association of persons, who shall in any manner violate any of the provisions of this act shall for each and every day that such violation shall be committed or continued forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the attorney general or the district or county attorney to prosecute for and recover the same.

SEC. 11. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

SEC. 12. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

SEC. 13. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

SEC. 14. Whereas the people of this state are without a remedy against trusts, therefore an emergency and imperative public necessity exists requiring that the constitutional rule which requires that all bills shall be read on three several days be suspended, and that this act take effect from and after its passage, and it is so enacted.

Approved March 30, 1889.

Trusts.

CHAP. 83.—[H. B. No. 404.] An act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That an act entitled "An act to define trusts and to provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30, 1889, be so amended as to hereafter read as follows:

SECTION 1. That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of

trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

SEC. 2. That any corporation holding a charter under the laws of the State of Texas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

SEC. 3. For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the Attorney General or district or county attorney, or either of them, upon his own motion and without leave or order of any court or judge, to institute suit or *quo warranto* proceedings in Travis county, at Austin, or at the county seat of any county in the State where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise and the dissolution of its corporate existence.

SEC. 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision by injunction or other proper proceedings in the district court of Travis county, in the name of the State of Texas.

SEC. 5. That the provisions of chapter 48, general laws of this State, approved July 9, 1879, to prescribe the remedy and regulate the proceedings by *quo warranto*, etc., shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this act.

SEC. 6. If any person shall be or become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of either

two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption, below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its prices may in any manner be affected or aid or advise in the creation or carrying out of any such combination, or who shall as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations, shall be punished by fine of not less than fifty nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

SEC. 7. In any indictment for an offense named in this act it is sufficient to state the effects or purposes of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

SEC. 8. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

SEC. 9. Persons out of the State may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this act, which do not in their commission necessarily require a personal presence in this State, the object being to reach and punish all persons offending against its provisions, whether within or without the State.

SEC. 10. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this act shall for each and every day that such violation shall be committed or continued forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed, or where either of the offenders reside, or in Travis county, and it shall be the duty of the Attorney General or the district or county attorney to prosecute for and recover the same.

SEC. 11. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

SEC. 12. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State: *Provided*, this act shall not be held to apply to livestock and agricultural products in the hands of the producer or raiser, nor shall it be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages.

SEC. 13. That nothing in this act shall be held or con-

strued to affect or destroy any rights which may have accrued or to affect the right of the State to recover penalties, or to affect the right of the State to forfeit charters of domestic corporations and prohibit foreign corporations from doing business in this State, or affect the right of the State to maintain prosecutions for violations thereof, under any law of this State relating to trusts, for acts heretofore done.

SEC. 14. Any court, officer or tribunal having jurisdiction of the offense defined in this act, or any district or county attorney or grand jury may subpœna persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of the foregoing sections. Any person so summoned and examined shall not be liable to prosecution for any violation of said sections about which he may testify fully and without reservation.

SEC. 15. All laws or parts of laws in conflict with this act are hereby repealed.

SEC. 16. Whereas, the people of this State are without an adequate remedy against trusts, therefore an emergency and imperative public necessity exists requiring that the constitutional rule which requires that all bills shall be read on three several days be suspended, and it is so enacted.

Approved April 30, 1895.

Anti-Trust Law.

S. B. No. 323.] CHAPTER CXLVI.

AN ACT to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suits therefor.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Any corporation organized under the laws of this or any other State or country, and transacting or conducting any kind of business in this State, or any partnership, or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act.

SEC. 2. A "monopoly" is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, custom, skill or acts, or of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a "monopoly," as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stock or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies are especially declared to constitute monopolies within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a "monopoly", as defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

SEC. 3. If any person, persons, company, partnership, association or corporation, engaged in the manufacture of any article of commerce or consumption from the raw material produced or mined in this State, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manu-

facture, or give away their manufactured products, for the purpose of driving out competition or financially injuring competitors engaged in the manufacture and refining of raw material in this State, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this State, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction shall be subject to the penalties of this act.

SEC. 4. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this State or elsewhere, shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way, or give away within this State, their products for the purpose of driving out competition or financially injuring competitors engaged in similar business, said person, persons, company, partnership, association, corporation or agent resorting to this method of securing a monopoly within this State in such business, shall be deemed guilty of a conspiracy to form or secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subject to the penalties of this act.

SEC. 5. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this act shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the State, at the relation of the Attorney General or the district or county attorney ; the moneys thus collected to go into the State treasury, and to become a part of the general fund, except as hereinafter provided.

SEC. 6. If any two or more persons or corporations who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing

whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing ; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding ; or shall boycott, or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding any such article or thing aforesaid, it shall be a violation of this act ; and any person, firm, corporation, or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

SEC. 7. Any corporation created or organized by or under the laws of this State, which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises ; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in the State, be by the Court declared forfeited, void and of non-effect, and shall thereupon cease and determine ; and any corporation created or organized by or under the law of any other State or country, which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in the State, its rights and privileges to do business in this State shall be declared forfeited ; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this State, has been, while acting as such agent, and in the name, behalf, or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as *prima facie* proof of the act of the corporation itself ; and it shall be the duty of the clerk of said court to certify the decree thereof to the Secretary of State, and if it be an insurance company, to the Commissioner of Insurance, Statistics

and History of the State, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

SEC. 8. It shall be the duty of the Secretary of State on or about the first day of July of each year, and at such other times as he shall deem necessary, to address to the president, secretary or treasurer of each incorporated company doing business in this State a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer under oath of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter of inquiry as follows:

AFFIDAVIT.

STATE OF TEXAS. }
County of ----- }

I ---------- do solemnly swear that I am the ---------- (president, secretary, treasurer or director) of the corporation known and styled ----------, duly incorporated under the laws of ----------, on the ---- day of ---------, 19--, and now transacting or conducting business in the State of Texas, and that I am duly authorized to represent said corporation in making this affidavit, and I do further solemnly swear that the said --------- known and styled as aforesaid has not since the ---- day of --------- (naming the day upon which this act takes effect), created, entered into or become a member of or a party to, and was not, on the ---- day of --------- nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation or understanding, with any other corporation, partnership, individual, or any other person, or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not entered into

or become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation, to fix or limit the amount of supply or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, or any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not issued, and does not own any trust certificates for any corporation, agent, officer or employee, or for the directors or stockholders of any corporation, has not entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholders, or directors thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article; that it has not entered into any conspiracy, defined in the preceding sections of this act, to form or secure a trust or monopoly in restraint of trade; that it has not been since January 31, A. D. 1900, and is not now a monopoly by reason of any conduct on its part which would constitute it a monopoly under the provisions of Sections 2, 3, 4, 5, 6, 10 and 11, of this act, and is not the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw material or preparing the same for market by any wrapping, baling or other process, and while leasing, renting or operating the same refuses or fails to put the same on the market for sale; that it has not issued, and does not own any trust certificates, and has not, for any corporation or any agent, officer or employe thereof, or for the directors or stockholders thereof, entered into, and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with the stockholders, directors or any officer, agent or employe of any corporation or corporations, the purpose and effect of which combination, contract or agreement would be a conspiracy to defraud, as defined in Section 1 of this act, or

to create a monopoly, as defined in Sections 2, 3, 4, 5, 6, 10 and 11 of this act.

(President, Secretary, Treasurer or Director.)

Subscribed and sworn to before me, a ------- ---- within and for the county of ---------- this ---------- day of ----------, 19----

(SEAL.)

And on refusal to make oath, in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, such failure shall be *prima facie* proof that such incorporated company is transacting business in the State of Texas, and has violated the provisions of this act, every day after the expiration of thirty days from the mailing of said letter of inquiry, the Secretary of State shall certify to the prosecuting attorney of the district or county wherein said corporation is located, and it shall be the duty of such prosecuting attorney, at his earliest practicable moment, in the name of the State, and at the relation of said prosecuting attorney, to proceed against such corporation, if a domestic corporation, for the recovery of the money forfeit provided for in this act, and also for the forfeiture of its charter or certificate of incorporation. If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and to forfeit its right to do business in this State; and provided, that whatever money, bonds or other securities may be on deposit in this State shall remain subject to the decision of said court to secure whatever penalties or costs may be adjudged against said corporation, or individual. It is provided, however, that all parties making the affidavit provided for in this section shall be exempt from criminal prosecution for any violation of law that may be disclosed by such affidavit. It is further provided, that the Secretary of State shall, from time to time, when he may have reason to believe that individuals or partnerships are doing business in this State in violation of this act, address the letter of inquiry herein provided for to such individuals or partnerships and require of them the same answers under oath prescribed in

this section for the officers of corporations, the affidavit to which must be made by the individual addressed, or some member of the partnership addressed; the form of affidavit herein prescribed, with such changes as may be necessary to make it applicable to individuals and partnerships shall be inclosed in said letter of inquiry.

SEC. 9. It shall be the duty of the Attorney-General and the prosecuting attorney of each district or county, respectively, to enforce the provisions of this act. The Attorney-General and the prosecuting attorney shall institute and conduct all suits begun in the district courts, and upon appeal the Attorney-General shall prosecute said suits in the courts of Civil Appeals and Supreme Court. The prosecuting attorney shall receive for his compensation one-fourth of the penalty collected; provided, the fees allowed the prosecuting attorney representing the State, provided for in this section, shall be over and above the fees allowed him by the general fee bill now in force.

SEC. 10. All actions authorized and brought under this act shall have precedence on motion of the prosecuting attorney or Attorney-General of all other business, civil and criminal, except criminal cases where the defendants are in jail.

SEC. 11. Each corporation, co-partnership, firm or individual who may be the owner or lessee of a patent to any machinery intended, used or designed for manufacturing any raw materials or preparing the same for market by any wrapping, baling or other process, who shall lease, rent, or operate the same in their own name and refuse or fail to put the same on the market for sale, shall be adjudged a monopoly, and be subject to all the pains and penalties provided in this act.

SEC. 12. The sale, delivery or disposition of any of the articles, commodities or things hereinbefore mentioned by any individual, company or corporation transacting business contrary to the provisions of this act, within this State or elsewhere, is hereby declared to be unlawful and contrary to public policy, and the purchaser of any article or commodity from any such offending individual, company or corporation shall not be liable for the price or payment thereof, and may plead this act as a defense to any suit for the price or payment, whether the purchase was made directly from the indi-

vidual, company or corporation so unlawfully transacting business, or indirectly from one who acted for such individual, company or corporation as agent, representative, solicitor or canvasser; and provided, further, that where any money or other thing of value is paid to such individual, company or corporation so unlawfully transacting business, its agent, representative, solicitor or canvasser, the person so paying the same may recover back the amount of the money or the value of the thing so paid.

SEC. 13. The following corporations, co-partnerships, firms or individuals are also adjudged a monopoly, and subject to all the pains and penalties provided in this act :

Every corporation, co-partnership, firm or individual, which may gather items of news or press dispatches for sale to newspapers and which shall refuse to sell said items of news or press dispatches to more than one newspaper to a stated number of inhabitants in any city, town or subdivision of the State of Texas, or within a certain radius of territory. Every association of newspapers formed for the purpose of exchanging items of news and press dispatches, which may require of its members under pain of forfeiting their membership, that they do not sell to or exchange with newspapers not members of said association any items of news or press dispatches.

SEC. 14. The provisions of the foregoing sections, and the pains and penalties provided for for violations of this act shall be held and construed to be cumulative to all laws now in force in this State. And provided, that the provisions of this act shall not exempt from punishment or forfeiture any person, firm, association of persons or corporation, who may have violated or offended against any law now in existence that may be or may be construed to be repealed by this act or in conflict herewith. And provided further, that nothing in this act shall be deemed or construed to affect any suits or prosecutions now pending or hereafter to be instituted upon any cause of action, forfeiture or penalty accruing or to accrue prior to the date of the taking effect of this act, but all such rights to maintain, institute or prosecute all such causes of action are hereby reserved to the State, in the same manner and with the same effect as if this law had not been passed; provided further, that this act shall take effect from and after January 31, A. D. 1900.

SEC. 15. The near approach of the end of the session, and the fact that we now have no adequate anti-trust law upon the statutes, and the importance of such legislation, create an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

Approved May 25, 1899.

Trusts and Conspiracies—Penalty—Amendment.

H. B. No. 845.] CHAPTER CLXXII.

AN ACT to amend Article 5318, Title 108, of the Revised Civil Statutes of the State of Texas, prescribing penalties against trusts and conspiracies against trade.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That Article 5318, Title 108, of the Revised Civil Statutes of the State of Texas be so amended as to hereafter read as follows:

ARTICLE 5318. Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this chapter shall forfeit not less than two hundred dollars nor more than five thousand dollars for every such offense, and each day each firm, person, corporation or association of persons shall continue to do so shall be a separate offense; the penalty in such case may be recovered in the name of the State of Texas in any county where the offense is committed, or where either of the offenders reside, or in Travis county, and it shall be the duty of the Attorney General or the district or county attorney to prosecute for and recover the same.

SEC. 2. This act shall take effect and be in force from and after January 31, 1900, and the same shall not be so construed as to affect any suits pending at the time it takes effect.

SEC. 3. The near approach of the close of the Legislature, and the crowded condition of the calendar, and the importance of making the penalties of existing trust laws correspond, create an emergency and an imperative public necessity requiring the suspension of the constitutional rule requiring bills to be read on three several days, and it is so suspended.

Approved June 5, 1899.

Anti-Trust Law—Defining and Prohibiting Trusts, Monopolies and Conspiracies.

H. B. No. 457.] CHAPTER XCIV.

AN ACT to define, prohibit and declare illegal, trusts, monopolies and conspiracies in restraint of trade, and to prescribe penalties for forming or being connected with such trusts, monopolies and conspiracies, and to provide for the suppression of the same and to promote free competition in the State of Texas, and to repeal all laws in conflict therewith.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any, or all of the following purposes:

1. To create or which may tend to create or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation shall be in any manner, affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix, or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof.

SEC. 2. That a monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first section of this Act.

2. Where any corporation acquires the shares or certifi-

cates of stock or bonds, franchises or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

SEC. 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade.

1. Where any two or more persons, firms, corporations, or associations of persons who are engaged in buying or selling any article of merchandise, produce or any commodity enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation, or association of persons any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

SEC. 4. Any and all trusts, monopolies and conspiracies in restraint of trade as herein defined, are hereby prohibited and declared to be illegal.

SEC. 5. Any corporation holding a charter under the laws of the State of Texas, which shall violate any of the provisions of this Act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

SEC. 6. For a violation of any of the provisions of this Act by any corporation mentioned herein, it shall be the duty of the Attorney General, upon his own motion, and without leave or order of any judge or court, to institute suit or *quo warranto* proceedings in Travis County, at Austin, or at the county seat of any county in the State, where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

SEC. 7. When a corporation organized under the laws of this State shall have been convicted of a violation of any of the provisions of this Act, and its charter and franchise has been forfeited, as provided in section 5, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of

its obligations, shall be permitted to incorporate or do business in Texas.

SEC. 8. Every foreign corporation violating any of the provisions of this Act is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision by injunction or other proceedings in the district court of Travis County, in the name of the State of Texas.

SEC. 9. The provisions of Chapter 92 of the Revised Statutes of this State of 1895, to prescribe the remedy and regulate the proceedings by *quo warranto*, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this Act.

SEC. 10. When any foreign corporation has been convicted of a violation of any of the provisions of this Act, and its right to do business in this State has been forfeited, as provided in Section 8 of this Act, no other corporation to which the defaulting corporation may have transferred its properties, and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

SEC. 11. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this Act shall, for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the State of Texas in any county where the offense is committed or where either of the offenders reside, or in Travis County and it shall be the duty of the Attorney-General, or the district or county attorney under the direction of the Attorney-General, to prosecute for the recovery of the same, and the fees of the prosecuting attorney for representing the State in proceedings under this Act shall be over and above the fees allowed him under the general fee bill.

SEC. 12. Any contract or agreement in violation of the provisions of this Act shall be absolutely void and not enforceable either in law or equity.

SEC. 13. And in addition to the penalties and forfeitures herein provided for, every person violating this Act may further be punished by imprisonment in the penitentiary not less than one nor more than ten years.

SEC. 14. In prosecutions for the violation of any of the

provisions of this Act, evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as *prima facie* proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation.

SEC. 15. Upon the application of the Attorney-General, or of any district or county attorney, made to any justice of the peace in this State, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice of the peace is an officer, knows of a violation of any of the provisions of this Act, it shall be the duty of the justice of the peace to whom such application is made, to have summoned and to have examined, such witness in relation to violations of any of the provisions of this Act, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn and the justice of the peace shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such sworn statement shall be delivered to the Attorney General, district or county attorney upon whose application the witness was summoned. Should the witness summoned, as aforesaid, fail to appear, or to make statement of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person so summoned and examined shall not be liable to prosecution for any violation of the provisions of this Act about which he may testify fully and without reserve.

SEC. 16. All actions authorized and brought under this Act shall have precedence, on motion of the prosecuting attorney or the Attorney General, of all other business, civil and criminal, except criminal cases where the defendants are in jail.

SEC. 17. That all laws and parts of laws in conflict with this Act be and the same are hereby repealed, and that Title CVIII of the Revised Civil Statutes of the State of Texas of 1895, and articles 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321 and 5321*a*, thereof, be and the same are hereby

expressly repealed; and that articles 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 988*a*, 988*b*, 988*c*, 988*d*, of Chapter 7, in Title XVIII of the Penal Code of the State of Texas of 1895, be and the same are hereby expressly repealed; and that an Act entitled "An Act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and promote free competion in the State of Texas, and to repeal all laws and parts of laws in conflict with this Act", approved April 30, 1895, and known and published as Chapter 83 of the General Laws of the Twenty-fourth Legislature, be and the same is hereby expressly repealed; and that An Act entitled "An Act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violate the terms of this Act, and to authorize the institution and prosecution of suits therefor," approved May the 25th, 1899, and published and known as Chapter CLXVI, of the General Laws of the Twenty-sixth Legislature, be and the same are hereby expressly repealed, and that An Act entitled "An Act to amend Article 5318, Title 108, of the Revised Civil Statutes of the State of Texas, prescribing penalties against trusts and conspiracies against trade", approved June 5th, 1889, and known as Chapter CLXXII of the General Laws of the Twenty-sixth Legislature, be and the same is hereby expressly repealed; provided nothing in this Act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this State, for acts committed before this Act takes effect.

SEC. 18. The fact that the anti-trust laws enacted by the Legislature of the State of Texas in 1895 have been held to be unconstitutional, creates an emergency and imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended and that this Act take effect and be in force from and after its passage, and it is so enacted.

Approved March 31, 1903.

Foreign Corporations.

SEC. 1. Foreign corporations required to file charters and procure a permit.

2. Shall not exercise rights until complying with this act.

3. Forfeiture of permits for removal of causes from State to Federal Courts.

4. Forfeit recoverable by the State against corporations not securing permits from January 1, 1888. Foreign corporations defined.

5. Penalty against agents of corporations doing business without a permit.

CHAP. 128.—[H. B. No. 316.] An Act to require foreign corporations to file their articles of incorporation with the Secretary of State, and imposing certain conditions upon such corporations transacting business in the State, and providing penalties for a violation of the same.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That hereafter any corporation for pecuniary profit, organized under the laws of any other State, or of any Territory of the United States, or of any foreign country, desiring to transact business in this State, shall be and is hereby required, on and after January 1, 1888, to file with the Secretary of State a certified copy of its articles of incorporation, duly attested, accompanied by a resolution of its board of directors or stockholders, authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this State engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this State, said application to contain a stipulation that said permit shall be subject to each of the provisions of this act. And thereupon the Secretary of State shall issue to such corporation a permit for the general transaction of the business of such corporation; and upon the receipt of such permit such corporation shall be permitted and authorized to carry on its business in this State.

SEC. 2. No foreign corporation which has not in good faith complied with the provisions of this act, and taken out a permit, shall hereafter be authorized to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations until it has complied herewith and taken out such permit.

SEC. 3. Any foreign corporation sued or impleaded in any of the courts of this State, upon any contract made or executed in this State, or to be performed in this State, or for any act or omission, public or private, arising, originating, or happening in the State, which shall remove any such cause from such State court into any of the Federal courts held or sitting in this State, for the cause that such corporation is a nonresident of this State, or a resident of another State, than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit issued or granted to such corporation to transact business in this State; such forfeiture to be determined from the record of removal, and shall date from the date of the filing of the application on which such removal is effected or sought to be effected. And whenever any corporation shall thus forfeit its said permit, no new permit shall be issued to said corporation for the space of six months thereafter.

SEC. 4. Any foreign corporation that shall carry on its business and transact the same on and after January 1, 1888, in the State of Texas, by its officers, agents, or otherwise without having complied with this statute, and taken out and having a valid permit, shall forfeit and pay to the State for each and every day in which such business is transacted and carried on the sum of one hundred dollars, to be recovered by suit in any court having jurisdiction. A foreign corporation within the meaning of this act, is meant any corporation not organized under and by virtue of the laws of this State.

SEC. 5. Any agent, officer or employe who shall knowingly act or transact such business for such corporation when it has no valid permit as provided herein, shall be guilty of a misdemeanor, and for each offense shall be fined not to exceed one hundred dollars, or imprisonment in the county jail not to exceed thirty days.

Approved, April 2, 1887.

Corporations—Foreign.

SEC. 1. Foreign corporations for pecuniary profit required to file copy of its articles with secretary of state.

2. Time within which such corporations now transacting business must comply.

3. No such corporation can maintain any suit or action unless complying with provisions hereof.

4. Corporations exempted from provisions hereof.

5. Schedule of fees.

6. Permit to extend for period of ten years.

7. Evidence.

8. Repealing clause.

9. Emergency clause.

CHAP. 78.—[S. B. No. 291.] An Act to require foreign corporations to file their articles of incorporation with the secretary of state, and imposing certain conditions upon such corporations transacting business in this state, and to repeal an act approved April 2, 1887, entitled "An Act to require foreign corporations to file their articles of incorporation with the secretary of state, and imposing certain conditions upon such corporations transacting business in the state, and providing penalties for a violation of the same."

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That hereafter any corporation for pecuniary profit (except as hereinafter provided), organized or created under the laws of any other state, or of any territory of the United States, or any municipality of such state or territory, or of any foreign government, sovereignty or municipality, desiring to transact business in this state, or solicit business in this state, or establish a general or special office in this state, shall be and the same are hereby required to file with the secretary of state a duly certified copy of its articles of incorporation, and thereupon the secretary of state shall issue to such corpora-

tion a permit to transact business in this state. If such corporation is created for more than one purpose the permit may be limited to one or more purposes.

SEC. 2. All such corporations now transacting business in this state shall have four months from the date when this act takes effect to comply with the conditions hereof by filing their articles of incorporation as provided in section 1 of this act.

SEC. 3. Thereafter no such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort, unless at the time such contract was made or tort committed the corporation had filed its articles of incorporation under the provisions of this act in the office of the secretary of state for the purpose of procuring its permit.

SEC. 4. The provisions of this act shall not apply to corporations created for the purpose of constructing, building, operating or maintaining any railway, or to such corporations as are required by law to procure permits to do business from the commissioner of agriculture, insurance, statistics, and history.

SEC. 5. Such corporation shall, if its capital stock be one hundred thousand dollars or less, pay a fee of twenty-five dollars to procure such permit; if its capital stock be more than one hundred thousand dollars, and less than five hundred thousand dollars, it shall pay a fee of fifty dollars; if its capital stock be five hundred thousand dollars, and less than one million dollars, it shall pay a fee of one hundred dollars; if its capital stock exceed one million dollars, it shall pay a fee of two hundred dollars.

SEC. 6. No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the secretary of state.

SEC. 7. Either the original permit or certified copies thereof by the secretary of state shall be evidence of the compliance of [on] the part of any corporation with the terms of this act. A certificate of the secretary of state to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this act.

SEC. 8. The act of April 2, 1887, entitled "An Act to require foreign corporations to file their articles of incorporation with the secretary of state, and imposing certain conditions upon such corporations transacting business in the state and providing penalties for a violation of the same", be and the same is hereby repealed.

SEC. 9. The near approach of the end of this session of the legislature creates an *imperative public necessity* that the rule requiring bills to be read on three several days be suspended, and it is so suspended.

Approved, April 3, 1889.

[NOTE: Sections 1, 3, 4, 6 and 7 of the above act, were carried into the Revised Statutes of 1895 as articles 745, 746, 747, 748 and 749; and the substance of section 5 appears in Art. 2439.]

S. B. No. 216.] CHAPTER 119.

AN ACT to amend Article 745 of the Revised Civil Statutes of the State of Texas, requiring foreign corporations to file their articles of incorporation with the Secretary of State and imposing certain conditions upon said corporations transacting business in this State, and authorizing the Secretary of State to issue permits to such corporations.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That Article 745 of the Revised Civil Statutes of the State of Texas be so amended as to hereafter read as follows:

ARTICLE 745. Hereafter, any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other State, or of any Territory of the United States, or of any municipality of such State or Territory, or of any foreign government, sovereignty or municipality desiring to transact business in this State, or solicit business in this State, or establish a general or special office in this State, shall be and the same is hereby required to file with the Secretary of State a duly certified copy of its articles of incorporation, and thereupon the secretary of state shall issue to such corporation a permit to transact business in this State. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes; and such corporation on obtaining such permit shall have and enjoy all the rights and privileges conferred by the laws of this State on corporations organized under the laws of this State, and shall be authorized and empowered to hold, purchase, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and also, to take, hold and convey such other property, real, personal or mixed, as may be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to the corporation; provided, that if such corporation so obtaining a permit to do business in this State, shall acquire any real estate under the powers herein conferred, it shall alienate all real property so acquired by it not necessary for

the purposes of such corporation, within fifteen years from the time of acquisition; and provided, further, that such corporation shall alienate all real estate acquired by it for the purposes of such corporation, within fifteen years from the expiration of the time for which the permit is issued, or if such permit be renewed, or such corporation be otherwise authorized to carry on business in this State, then such corporation shall alienate such real estate within fifteen years after the expiration of the time for which such permit is extended, or it is so authorized to carry on business in this State; and provided, further, that if such corporation shall cease to carry on business in this State, that it shall alienate all such real estate so acquired by it, within fifteen years after the time it shall so cease to carry on business in this State.

[NOTE.—The foregoing act was presented to the Governor of Texas for his approval, on Tuesday, the fourth day of May, A. D. 1897, but was not signed by him nor returned to the House in which it originated with his objections thereto within the time prescribed by the Constitution, and thereupon became a law without his signature.—J. W. Madden, Secretary of State.]

Takes effect 90 days after adjournment.

(Revised Statutes 1895.)

TITLE XXI.

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CHAPTER SEVENTEEN.

Corporations—Foreign.

[For serving process upon, see Article 1223. For venue of suits against, see Article 1194.]

	Article		Article
Foreign corporations for pecuniary profit required to file copy of its articles with secretary of state	745	Corporations exempted from provisions hereof	747
No such corporation can maintain any suit or action unless complying with provisions hereof	746	Permit to extend for period of ten years	748
		Evidence	749

ARTICLE 745. Hereafter any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other state, or of any territory of the United States or any municipality of such state or territory, or of any foreign government, sovereignty or municipality, desiring to transact business in this state, or solicit business in this state, or establish a general or special office in this state, shall be and the same are hereby required to file with the secretary of state a duly certified copy of its articles of incorporation, and thereupon the secretary of state shall issue to such corporation a permit to transact business in this state. If such corporation is created for more than one purpose the permit may be limited to one or more purposes.

ART. 746. No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this

state upon any demand, whether arising out of contract or tort, unless at the time such contract was made or tort committed the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the secretary of state for the purpose of procuring its permit.

ART. 747. The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating, or maintaining any railway, or to such corporations as are required by law to procure permits to do business from the commissioner of agriculture, insurance, statistics and history.

ART. 748. No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the secretary of state.

ART. 749. Either the original permit or certified copies thereof by the secretary of state shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the secretary of state to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter.

TITLE XVIII.

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CHAPTER SEVEN.

Trusts—Conspiracies Against Trade.

	Article
Defines "trusts"	976
Corporations to forfeit charter for violation of this law	977
Duty of attorney-general etc.	978
Foreign corporations violating this act forbidden to do business	979
Quo warranto proceedings	980
Conspiracy against trade	981
Requisites of indictment	982
Requisites of proof	983
Persons out of the state liable to indictment	984
Associations violating this act to forfeit fifty dollars a day, recoverable on suit	985
Contracts or agreements in violation hereof void	986
The provisions hereof cumulative	987
Exempts live stock and agricultural products in hands of producers	988
Penalty for combining	988*a*
Requisites of indictment	988*b*
Requisites of proof	988*c*
Non-residents of the state liable	988*d*

ARTICLE 976. A trust is a combination of capital, skill or acts by two or more persons, firms, corporation or associations of persons, or of either two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade.

2. To limit or reduce the production, or increase or reduce the price of merchandise or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities.

4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

5. To make or enter into, or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation, of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

ART. 977. Any corporation holding a charter under the laws of the state of Texas which shall violate any of the provisions of this law shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

ART. 978. For a violation of any of the provisions of this law by any corporation mentioned herein it shall be the duty of the attorney general or district or county attorney, or either of them, upon his own motion, and without leave or order of any court or judge, to institute suit or *quo warranto* proceedings in Travis County, at Austin, or at the county seat of any county in the state, where such corporation exists, does business or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

ART. 979. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohib-

ited from doing any business within this state, and it shall be the duty of the attorney general to enforce this provision by injunction or other proper proceedings in the district court of Travis county, in the name of the state of Texas.

ART. 980. The provisions of chapter forty-eight, general laws of this state, approved July 9, 1879, to prescribe the remedy and regulate the proceedings by *quo warranto*, etc., shall except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this law.

ART. 981. Any violation of either or all of the provisions of this law shall be and is hereby declared a conspiracy against trade, and any person who may be or who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant or employe, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or orders thereunder or in pursuance thereof, shall be punished by fine not less than fifty dollars nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

ART. 982. In any indictment for an offense named in this act it is sufficient to state the purposes or effects of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when and where it was created.

ART. 983. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

ART. 984. Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter which do not in their com-

mission necessarily require a personal presence in this state, the object being to reach and punish all persons offending against its provisions, whether within or without the state.

ART. 985. Each and every firm, person, corporation or association of persons, who shall in any manner violate any of the provisions of this law shall, for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state of Texas in any county, where the offense is committed or where either of the offenders reside, or in Travis county, and it shall be the duty of the attorney general or the district or the county attorney to prosecute and recover the same.

ART. 986. Any contract or agreement in violation of the provisions of this law shall be absolutely void and not enforceable either in law or equity.

ART. 987. The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

ART. 988. The provisions of this law shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

[NOTE.—Articles 988*a*, 988*b*, 988*c* and 988*d*, comprising the penal sections of the act of 1895, p. 112, appear to be cumulative of the preceding articles of this chapter.]

ART. 988*a*. If any person shall be or may become engaged in any combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of either two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure whereby its price to the public shall be in any manner controlled or established any

article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption, below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them and themselves and others to prevent a free and unrestricted competition among themselves and others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its prices may in any manner be affected, or aid or advise in the creation or carrying out of any such combination, or who shall as principal, manager, director, agent, servant or employe, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, directions, conditions or orders of such combinations, shall be punished by fine of not less than fifty nor more than five thousand dollars, and by imprisonment in the penitentiary not less than one nor more than ten years, or by either such fine or imprisonment. Each day during a violation of this provision shall constitute a separate offense.

ART. 988*b*. In any indictment for an offense named in this law it is sufficient to state the effects or purposes of the trust or combination and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created.

ART. 988*c*. In prosecutions under this law it shall be sufficient to prove that a trust or combination as defined herein exists and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument

at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

ART. 988*d*. Persons out of the state may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this act, which do not in their commission necessarily require a personal presence in this state, the object being to reach and punish all persons offending against its provisions, whether within or without the state.

(Revised Statutes (Civil) 1895)

TITLE CVIII.

Trusts—Conspiracies Against Trade.

	Article		Article
Definition of "trusts"	5313	Penalty for violation of this title	5318
Forfeiture of charter of corporation, when	5314	Contracts void, when	5319
Duties of attorney-general in relation thereto	5315	Law cumulative	5320
Foreign corporations	5316	Does not apply to agricultural products, etc.	5321
Quo warranto proceedings, etc.	5317	Compulsory process	5321*a*

ARTICLE 5313. A trust is a combination of capital, skill, or acts by two or more persons, firms, corporations, or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce or aids to commerce, or to create or carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

2. To increase or reduce the price of merchandise, produce or commodities.

3. To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

5. To make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity, or article of

trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

ART. 5314. Any corporation holding a charter under the laws of the state of Texas which shall violate any of the provisions of this chapter shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

ART. 5315. For a violation of any of the provisions of this chapter by any corporation mentioned herein, it shall be the duty of the attorney-general or district or county attorney, or either of them, upon his own motion, and without leave or order of any court or judge, to institute suit or *quo warranto* proceedings in Travis county, at Austin, or at the county seat of any county in the state, where such corporation exists, does business or may have a domicile for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence.

ART. 5316. Every foreign corporation violating any of the provisions of this chapter is hereby denied the right and prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in the district court of Travis county, in the name of the state of Texas.

ART. 5317. The provisions of chapter 48, general laws of this state, approved July 9, 1879, to prescribe the remedy and regulate the proceedings by *quo warranto*, etc., shall, except in so far as they may conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this chapter.

[NOTE.—The act of 1879, referred to in the preceding article, is title XCIII. of this revision.]

ART. 5318. Each and every firm, person, corporation or association of persons who shall in any manner violate any of the provisions of this chapter shall for each and every day that such violation shall be committed or continued, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state of Texas in any county where the offense is committed, or where either of the offenders reside, or in Travis county, and it shall be the duty of the attorney general or the district or county attorney to prosecute for and recover the same.

ART. 5319. Any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

ART. 5320. The provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state ; provided, this chapter shall not be held to apply to livestock and agricultural products in the hands of the producer or raiser, nor shall it be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages.

ART. 5321. Nothing in this chapter shall be held or construed to affect or destroy any rights which may have accrued, or to affect the right of the state to recover penalties, or to affect the right of the state to forfeit charters of domestic corporations and prohibit foreign corporations from doing business in this state, or affect the right of the state to maintain prosecutions for violations thereof, under any law of this state relating to trusts, for acts heretofore done.

ART. 5321*a*. Any court, officer or tribunal having jurisdiction of the offense defined in this chapter, or any district or county attorney or grand jury may subpœna persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of the foregoing articles. Any person so summoned and examined shall not be liable to prosecution for any violation of said articles about which he may testify fully and without reservation.